

1 MELINDA HAAG (CSBN 132612)  
United States Attorney

2 MIRANDA KANE (CSBN 150630)  
Chief, Criminal Division

4 PATRICIA J. KENNEY (CSBN 130238)  
Assistant United States Attorney

5 450 Golden Gate Avenue  
6 San Francisco, CA 94102  
7 Telephone: 415.436.6857  
Facsimile: 415.436.7234  
Email: patricia.kenney@usdoj.gov

8 Attorneys for United States of America

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA, ) No. 08-CR-0443 MMC

13 v. Plaintiff, ) STIPULATION AND ORDER

14 EARL HARREL SIMS, II, )

15 Defendant. )

16 KAP SUK SIMS, )

17 Petitioner. )

18 UNITED STATES OF AMERICA, )

No. 08-CV-5023 MMC

19 v. Plaintiff, )

STIPULATION AND ORDER

20 APPROXIMATELY \$57,378 IN UNITED )

21 STATES CURRENCY, )

22 Defendant. )

23 KAP S. SIMS, )

24 Claimant. )

1       The parties agree, subject to the Court's approval, that:

2       1.       The parties have discussed proceeding with one of two options to resolve the factual  
3 disputes in this case. One option the parties discussed is to have a hearing/trial before the Court at  
4 which time the parties would each be able to call witnesses and submit evidence including  
5 documentary evidence. The second option is for the parties to agree to submit this case based on  
6 the factual record developed and filed in connection with the summary judgment motion. Although  
7 the Federal Rules of Evidence apply, the parties agree that the Court can make credibility  
8 determinations and weigh the evidence in the factual record. The parties agree to proceed with the  
9 second option.

10      2.       On or before September 16, 2011, the parties will submit any additional evidence in  
11 support of their positions in the civil case and the criminal ancillary proceeding which has  
12 previously not been submitted, and the United States will be permitted to file the corrected copy of  
13 the tax return at that time.

14      3.       On or before September 23, 2011, the parties may file brief objections based on the  
15 Federal Rules of Evidence the factual record developed and filed. Also, the parties may choose to  
16 file a trial brief on or before September 23, 2011. Claimant Kap Sims has requested that the parties  
17 also be given one week to file a reply brief, but the undersigned Assistant United States Attorney  
18 will be out of town from September 28 until October 5. Accordingly the parties request that they  
19 be permitted to file an optional reply brief on or before October 11. Thereafter, the Court will take  
20 Kap Suk Sims's claims in the civil case and in the criminal ancillary proceeding under consideration  
21 without any additional hearing.

22      ///

23      ///

24      ///

25      ///

26      ///

27      ///

28      Stip & Order

          No. 08-CR-0443 MMC

          No. 08-CV-5023 MMC

1           4. Based on the foregoing, the case management conference previously scheduled for  
2 September 16, 2011 is taken off calendar.

3 **IT IS SO STIPULATED:**

4           MELINDA HAAG  
5           United States Attorney

6           Dated: September 9, 2011

7           \_\_\_\_\_  
8           /s/  
9           PATRICIA J. KENNEY  
10           Assistant United States Attorney  
11           Attorneys for the United States

12           Dated: September 8, 2011

13           \_\_\_\_\_  
14           /s/  
15           KAP SUK SIMS  
16           Petitioner/Claimant *pro se*

17 **PURSUANT TO THE FOREGOING STIPULATION IT IS SO ORDERED**, with the  
18 following exception and modification:

- 19           1. At plaintiff's request, set forth in plaintiff's Case Management Statement filed  
20 September 9, 2011, the Case Management Conference was held as initially scheduled.  
21           2. Pursuant to the parties' further stipulation, entered orally at the Case Management  
22 Conference on September 16, 2011, **IT IS FURTHER ORDERED** that the deadline for  
23 objections and trial briefs is EXTENDED to September 30, 2011, and the deadline for reply  
24 briefs is EXTENDED to October 18, 2011.

25           Dated: September 16, 2011

26             
27           HONORABLE MAXINE M. CHESNEY  
28           United States District Judge